

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMIE ANDERSON, JACKIE  
ANDERSON, XARIA ANDERSON and  
SHAE ANDERSON,

## Plaintiffs,

CASE NO. C09-5282 KLS

## ORDER

KITSAP COUNTY, KITSAP COUNTY SHERIFF'S DEPARTMENT, TIM PETERSON, SERGEANT JIM WHITE, and OXFORD SUITES AFFILIATION OF HOTELS,

## Defendants.

The Plaintiffs initially filed their Complaint in Pierce County Superior Court on April 8, 2009 and the case was removed to federal court on May 14, 2009. The undersigned is the trial judge on this matter based on the consent of the parties. In that regard, the parties are reminded to utilize the initials KLS in all captions rather than RJB.

## Kitsap County, Kitsap County Sheriff's Department and Sergeant Jim White (County

1 Defendants) filed a Fed. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim as well  
2 as a Fed. R. Civ. P. 56 summary judgment motion to dismiss. Dkt. 24. Except as noted below,  
3 the Court is treating the County Defendants' motion as a 12(b)(6) motion.

4 The Defendants filed their Response and in support of their response, submitted a  
5 pleading entitled “Plaintiffs’ Answer to County’s Interrogatories.” Dkt. 27.2. This document,  
6 however, does not set forth the specific questions addressed in the Interrogatories, it just includes  
7 answers, so the Court is left to guess as to the question. The Court also notes that the Plaintiffs  
8 do not specifically reference the attachment in their Response (Dkt. 27) except, perhaps, with the  
9 following statement appearing at page 7 of their Response relating to their claim of Intentional  
10 Infliction of Emotional Distress: “The facts stated, signed under oath by Mr. and Mrs. Anderson,  
11 attest to the contrary.” However, review of the Answers to Interrogatories shows only that Mr.  
12 Anderson signed them under oath. The Court will, however, consider the Answers to  
13 Interrogatories when analyzing the Intentional Infliction of Emotional Distress claim.

## FACTS ALLEGED IN PLAINTIFFS' COMPLAINT<sup>1</sup>

15 Harrison Medical Center made arrangements to pay for the Plaintiffs stay with the  
16 Oxford Suites while Mr. Anderson was interviewing for a position at Harrison Medical Center.  
17 The arrangement was for Oxford Suites to direct bill Harrison Medical Center for the plaintiffs  
18 stay beginning November 4, 2007 through November 8, 2007. In fact, when Mr. Anderson  
19 checked into the hotel he was advised by the clerk that the Medical Center had already paid for  
20 his hotel room.

<sup>1</sup> For purposes of the 12(b)(6) Motion to Dismiss, the Court accepts, as true, the facts, as alleged in the Plaintiffs' Complaint.

1 On November 6, 2007 and upon returning to their room around 7:30 p.m. the plaintiffs  
2 found a note from the Oxford Suites general manager, Tim Peterson, stating that he wanted to  
3 speak with them. The plaintiffs were not able to enter their hotel room as their key card no  
4 longer worked.

5 When Mr. Anderson went to see Mr. Peterson, Mr. Peterson demanded a credit card from  
6 Mr. Anderson for payment of the nights the plaintiffs had stayed there as well as for the rest of  
7 his stay. Mr. Peterson did not believe the plaintiff's statement that Harrison Medical was to be  
8 direct billed and he also accused Mr. Anderson of a number of things, including defrauding the  
9 hotel and that Harrison Medical Center had never heard of him. Mr. Anderson showed Mr.  
10 Peterson e-mail reservation confirmation documents Mr. Anderson had received from Harrison  
11 Medical Center. Mr. Peterson refused to accept this e-mail and called the sheriff.

12 Within minutes of returning to his room, after having received an operable key from Mr.  
13 Peterson, Sheriff Deputy Jim White knocked at the plaintiff's hotel door. Deputy White was  
14 immediately rude and aggressive to plaintiff. He reached into the room and grabbed plaintiff's  
15 wrist and twisted his arm around to his back, spinning him around and placing him into  
16 handcuffs.

17 Mr. Anderson was taken to the lobby and then to the parking lot where he was forced to  
18 endure the taunting of hotel guests. While in the parking lot other police officers were also  
19 pointing and gawking at him as he was placed into the squad car. Other Caucasian deputies  
20 arrived in their squad cars and stood watching the scene as it unfolded. They were pointing,  
21 gawking and drawing the attention of hotel guests and the public to the plaintiffs.

22 Deputy White told Mr. Anderson he was under arrest and that he had an e-mail from Sue  
23 Wallace, Recruiting Manager for Harrison Medical Center, stating that she had never heard of  
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1 Mr. Anderson. Deputy White briefly showed this e-mail to the plaintiff but would not let him  
2 hold it or read it.

3 Deputy White also directed Jackie Anderson, who was 8 ½ months pregnant and caring  
4 for their two daughters, ages 2 and 3, to leave the hotel or she too would be arrested. Mrs.  
5 Anderson had to pack their belongings into suitcases and load them into their vehicle. Deputy  
6 White refused to assist Mrs. Anderson with loading her vehicle when requested to do so by Mr.  
7 Anderson.

8 Mr. Anderson's wallet and jacket were taken from him and searched without his consent.  
9 However, it is unknown as to who took or searched the wallet and jacket.

10 Mr. Anderson was detained in the squad car for two hours during which time he  
11 repeatedly asked for an explanation as to why he was being detained. The only explanation  
12 Deputy White gave was that the plaintiff was not who he said he was and that he was defrauding  
13 the hotel. More specifically, Deputy White made the following two statements to the plaintiff:  
14 (1) "You are not who you say you are" and (2) "You're defrauding the hotel."

15 Mr. Anderson emotional turmoil was increased by the fear that his wife and children  
16 would have no idea as to what became of him. He asked to speak to his wife repeatedly and  
17 someone continuously denied those requests.

18 At the end of the two hours, without apology or explanation, Mr. Anderson's property  
19 (wallet and jacket) was returned to him and he was told he was free to go. Mr. Anderson was  
20 later charged with criminal trespass in Kitsap County District Court. He plead not guilty and the  
21 charge was later dismissed for lack of evidence.

22 The entire events caused the plaintiffs, including the two children ages 2 and 3, extreme  
23 emotional distress, humiliation, embarrassment and anger. For Mr. Anderson, having to witness  
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1 the stress and humiliation his wife and children experienced caused him extreme emotional  
2 distress. The Complaint asserts that "Plaintiff" had to seek medical help due to the emotional  
3 distress caused by defendants and the Court assumes that reference to plaintiff in the singular is  
4 reference to Mr. Anderson.

5 Mr. Anderson did obtain a job at Harrison Medical Center but he asserts that the  
6 relationship was damaged from the beginning due to the defendants' actions and that he was  
7 released from his position at the end of 2008, which, the court notes, was more than a year  
8 following the incident.

9 **COUNTY DEFENDANTS' MOTION**

10 The County Defendants move to dismiss the following claims: Claim I: Illegal Detention  
11 and Search; Claim II: Violation of Fourth, Fifth and Fourteenth amendment Rights, and Right to  
12 Due Process; Claim III: Malicious Prosecution; Claim IV: Defamation; and Claim VII:  
13 Intentional Infliction of Emotional Distress.

14 The Plaintiffs' Response (Dkt. 27) was directed only to Claim III: Malicious Prosecution;  
15 Claim IV: Defamation, and Claim VII: Intentional Infliction of Emotional Distress. The Plaintiff  
16 did not file any opposition to the County Defendants' motion to dismiss Claims I or II.

17 **FAILURE TO STATE A CLAIM**

18 "To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
19 accepted as true, to 'state a claim to relief that is plausible on its face.' . . . A claim has facial  
20 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable  
21 inference that the defendant is liable for the misconduct alleged. . . . The plausibility standard is  
22 not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a  
23 defendant has acted unlawfully. . . . Where a complaint pleads facts that are 'merely consistent  
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1 with' a defendant's liability, it 'stops short of the line between possibility and plausibility of  
 2 'entitlement to relief.'" *Ashcroft v. Iqbal*, 556 U.S. \_\_\_, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868  
 3 (2009).

4 In keeping with these principles a court considering a motion to dismiss can  
 5 choose to begin by identifying pleadings that, because they are no more than  
 6 conclusions, are not entitled to the assumption of truth. While legal conclusions  
 7 can provide the framework of a complaint, they must be supported by factual  
 8 allegations. When there are well-pleaded factual allegations, a court should  
 9 assume their veracity and then determine whether they plausibly give rise to  
 10 an entitlement to relief.

11 *Id.* at p. 1950.

#### DISCUSSION

12 **Claims I and II:** The County Defendants moved to dismiss these two claims in on the  
 13 basis that the Complaint failed to provide grounds to support the plaintiffs' entitlement to relief.  
 14 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-1965 (2007) and  
 15 *Ashcroft v. Iqbal*, 556 U.S. \_\_\_, 129 S.Ct. 1937 (2009). They asserted that it was unclear what  
 16 claim was being asserted, the legal basis therefore, or even which of the Plaintiffs is making the  
 17 claim.

18 The Plaintiffs did not mention these two claims in their response. Local Rule 7(b)(2)  
 19 states that "[i]f a party fails to file papers in opposition to a motion, such failure may be  
 20 considered by the court as an admission that the motion has merit." The Court is considering  
 21 such failure to even mention the two claims as such an admission and the undersigned hereby  
 22 GRANTS the County Defendants' motion to dismiss Claims I and II.

23 **Claim III: Malicious Prosecution.** Counsel for the County Defendants, Ione George,  
 24 included in her declaration (Dkt. 25) a certified copy of the criminal complaint that was filed  
 25 against Mr. Anderson in Kitsap County District Court. Dkt. 25, Exh. B. The Court notes that it  
 26 is undisputed that James Anderson was charged with criminal trespass. The criminal complaint

1 shows that it was filed in Kitsap County District Court and that it was signed by Deputy  
2 Prosecuting Attorney Bonnie M. Martin on May 8, 2008. Other documents are also included in  
3 Exhibit B, including a verified Kitsap County Sheriffs Office Report authored by Deputy Lee  
4 Watson. No explanation, however, has been provided as to the significance of this Report. It  
5 appears that the declaration of Ione George was filed solely with regard to the malicious  
6 prosecution claim.

7 Ms. George's declaration also purports to attach, as Exhibit A, a certified copy of the  
8 inside of the Kitsap County district Court file "where the court noted its finding of probable  
9 cause on July 14, 2008." Dkt. 25. A review of Exhibit A shows a date of "7-14.08" followed by  
10 illegible initials. Pursuant to Fed. R. Civ. P. 56, an affidavit "must be made on personal  
11 knowledge, set out facts that would be admissible in evidence, and show that the affiant is  
12 competent to testify on the matters stated." Ms. George has made no showing with regard to the  
13 interpretation she makes as to the significance of the date and initials that are shown on the  
14 certified attachment. The Court declines to conclude from this limited information that a judicial  
15 officer made a finding of probable cause.

16 Inasmuch as the Court is only considering the certified copy of the criminal complaint for  
17 purposes of the County Defendants' motion, it is not necessary to convert the motion to dismiss  
18 to a motion for summary judgment. The criminal complaint just confirms the fact asserted by  
19 the Plaintiffs – that a criminal trespass charge was filed – and it also confirms what is common  
20 knowledge, that such a charge can only be brought by a prosecuting attorney.

21 To maintain a common law claim of malicious prosecution, Mr. Anderson must prove the  
22 following: (1) that the prosecution claimed to have been malicious was instituted or continued  
23 by the County Defendants; (2) that there was want of probable cause for the institution or  
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1 continuation of the prosecution; (3) that the proceedings were instituted or continued through  
2 malice; (4) that the proceedings terminated on the merits in favor of the plaintiff, or were  
3 abandoned; and (5) that the plaintiff suffered injury or damage as a result of the prosecution.

4 *Gem Trading Company, Inc. v. Cudahy Corporation*, 92 Wn.2d 956, 962-963 (1979); *Bender v.*  
5 *City of Seattle*, 99 Wn. 2d 582, 593 (1983).

6 However, the passage of R.C.W. 4.24.350 removed the common law requirement that  
7 Mr. Anderson prove the fourth element – the proceedings terminated on the merits in favor of  
8 the plaintiff, or were abandoned. R.C.W. 4.24.350 reads as follows:

9 In any action for damages, whether based on tort or contract or otherwise, a  
10 claim or counterclaim for damages may be litigated in the principal action  
11 for malicious prosecution on the ground that the action was instituted with  
12 knowledge that the same was false, and unfounded, malicious and without  
probable cause in the filing of such action, or that the same was filed as a  
part of a conspiracy to misuse judicial process by filing an action known  
to be false and unfounded.

13 It is also true that a prosecuting attorney is the only individual authorized to file a  
14 criminal prosecution. However, that charging decision is necessarily predicated on information  
15 provided by law enforcement. In this case, the Plaintiffs have not presented any competent  
16 evidence nor have they alleged any facts to support a conclusion that the criminal trespass charge  
17 was “instituted or continued” based on information provided by Sergeant White or any of the  
18 other County Defendants. Nor have they asserted or alleged any facts upon which the Court  
19 could conclude that Sergeant White or any of the other County Defendants instituted or  
20 continued the proceeding “through malice.” Mr. Anderson merely states in his Complaint that he  
21 was charged with criminal trespass. He has wholly failed to present any facts to support a claim  
22 of malicious prosecution by the County Defendants.

1 The County Defendants' Motion to Dismiss Claim III asserting Malicious Prosecution is  
2 hereby GRANTED.

3 **Claim IV: Defamation.** Mr. Anderson states in his Complaint that "Defendants defamed  
4 Mr. Anderson by intentionally making false assertions about him in declarations and oral  
5 statements made during the course of their false arrest and malicious prosecution against Mr.  
6 Anderson, in an attempt to further their Malicious Prosecution and to besmirch the reputations of  
7 Mr. Anderson." The only facts alleged in his Complaint, as they pertain to the County  
8 Defendants and which could be considered statements are the two statements attributed to  
9 Sergeant Jim White: (1) "You are not who you say you are" and (2) "You're defrauding the  
10 hotel." These statements were made to the Plaintiff while he was in the squad car.

11 Under Washington case law, a defamation plaintiff must establish four essential elements  
12 to recover: (1) falsity; (2) an unprivileged communication; (3) fault; and (4) damages. *Mark v.*  
13 *Seattle Times*, 96 Wn.2d 473, 486, 635 P.2d 1081 (1981); *Bender v. City of Seattle*, 99 Wn.2d  
14 582, 599, 664 P.2d 492 (1983). Inasmuch as the plaintiff is a private individual, the degree of  
15 fault necessary to make out a *prima facie* case is that of negligence. *Bender, supra*, at p. 599.

16 Washington recognizes a qualified privilege for police officers in releasing information to  
17 the public and press. This acknowledges the right to inform the public but also clarifies that the  
18 right to inform the public does not include a "license to make gratuitous statements concerning  
19 the facts of a case or disparaging the character of other parties to an action. (citations omitted)." *Id.* at p. 601.

21 However, this Court need not even consider the issue of qualified privilege as no facts  
22 have been asserted by the Plaintiff to support the conclusion that Sergeant White or any of the  
23 other County Defendants "communicated" any disparaging statement to others regarding Mr.  
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1 Anderson. The two statements attributed to Sergeant White were statements made by Sergeant  
2 White to Mr. Anderson in response to Mr. Anderson's inquiry. There are no facts asserted in the  
3 Complaint that suggest there was any "communication" to others much less any facts to suggest  
4 that there was any "unprivileged communication" to others. The mere making of a statement by  
5 a defendant to the plaintiff, even if it is completely false and unfounded, does not then create a  
6 factual basis for a defamation claim. Someone else, other than the plaintiff, must have received  
7 the communication.

8 The Court notes the suggestion, in Plaintiffs' Response (Dkt. 27) that the "Andersons  
9 were defamed by the implications of the way Jamie was arrested and prosecuted for Trespass."  
10 The law of defamation does not support a claim by way of "implication." A statement must be  
11 made by the County Defendants and that statement must be communicated to others by the  
12 County Defendants.

13 Inasmuch as there are no facts alleged or asserted by the Plaintiff that the County  
14 Defendants "communicated" a false statement to anyone other than the Plaintiff, their motion to  
15 dismiss Count IV – Defamation is GRANTED.

16 **Claim IV: Intentional Infliction of Emotional Distress.**

17 A claim for intentional infliction of emotional distress, also referred to as the tort of  
18 outrage, requires a showing of: (1) extreme and outrageous conduct; (2) intentional or reckless  
19 infliction of emotional distress; and (3) actual result to the plaintiff of severe emotional distress.  
20 *Rice v. Janovich*, 109 Wn.2d 48, 61, 742 P.2d 1230 (1987).

21 The conduct must be such that it is "so outrageous in character, and so extreme in degree,  
22 as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly

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1 intolerable in a civilized community.” *Grimbsy v. Samson*, 85 Wn.2d 52, 59, 530 P.2d 291  
 2 (1975).

3 When a claim of outrage is made, the trial court must make an initial determination as to  
 4 whether the alleged conduct was so extreme and outrageous as to warrant a factual determination  
 5 by the jury. *Jackson v. Peoples Fed. Credit Union*, 25 Wn.App. 81, 84, 604 P.2d 1025 (1979).  
 6 In conducting its analysis, the court must consider: (1) a defendant’s position; (2) whether the  
 7 plaintiff was particularly susceptible to emotional distress, and if the defendants knew this fact;  
 8 (3) whether the defendants’ conduct may have been privileged under the circumstances; (4)  
 9 whether the degree of emotional distress caused by a party was severe as opposed to mere  
 10 annoyance, inconvenience, or normal embarrassment; and (5) whether the actor was aware that  
 11 there was a high probability that his or her conduct would cause severe emotional distress and  
 12 proceeded in a conscious disregard of it. *Spurrell v. Bloch*, 40 Wn. App. 854, 862, 701 P.2d 529  
 13 (1985), *rev. denied*, 104Wn.2d 1014 (1985).

14 This case stems from the arrest, by Sergeant White, of Jamie Anderson for what the hotel  
 15 manager considered to be an attempt to defraud the hotel by failing to pay for use of the hotel  
 16 room. The claim for outrage as against the County Defendants is necessarily based on the  
 17 actions of Sergeant White. A review of the factual assertions in the Complaint show the  
 18 Sergeant White was rude and aggressive towards Jamie Anderson when Mr. Anderson was  
 19 arrested and handcuffed while in his hotel room. That Sergeant White led Mr. Anderson to his  
 20 patrol car having to go through the lobby and into the parking lot. While he was walking to the  
 21 patrol car Mr. Anderson endured the taunting of hotel guests – but there are no facts alleged as to  
 22 what constituted the “taunting.” While in the parking lot, other police officers, not parties to this

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1 action, were pointing and gawking at Mr. Anderson as he was placed in the squad car. Mr.  
2 Anderson was detained in the squad car for two hours.

3 Sergeant White ordered Jackie Anderson to leave the hotel or she would be arrested.  
4 Sergeant White refused to allow Mr. Anderson to help his wife pack their things, to load their  
5 belongings into their vehicle, to care for their two small children during this time or to speak  
6 with his wife. Other non-parties, identified as hotel guests, made disparaging remarks regarding  
7 both Mr. and Mrs. Anderson.

8 At the conclusion of the two hours, Mr. Anderson was released and told he was free to  
9 go.

10 The Plaintiffs assert, in their complaint, that they all (Jamie Anderson, Jackie Anderson,  
11 and their two small children) suffered extreme emotional distress, humiliation, embarrassment,  
12 and anger and they assert that the County Defendants acted out of racial and ethnic  
13 discrimination and profiling. The Court notes, however, that these are conclusions without  
14 factual support. Specifically, there are no facts alleged or asserted to support a conclusion that  
15 Sergeant White acted out of racial and ethnic discrimination and profiling. The statement  
16 attributed to Sergeant White by Mrs. Anderson clearly reflects a poor choice of words, but  
17 without more is insufficient to lead to the conclusion that racial profiling or discrimination  
18 played a role in his response to the call from the hotel.

19 The only facts contained in their Complaint regarding extreme emotion distress is that  
20 Mr. and Mrs. Anderson had difficulty sleeping at night and concentrating during the day, and  
21 that they sought medical help for the emotional distress caused by the County Defendants.  
22 However, the plaintiffs again do not assert any facts with regard to the medical help they sought

1 or received. They assert no facts relating to their two young children other than the fact they  
2 were crying and upset during the time the events were unfolding at the hotel.

3 Mr. Anderson alleges that the incident damaged his employment relationship with  
4 Harrison Medical Center but he asserts no facts in his Complaint to support that conclusion.  
5 In their Interrogatories Answers (Dkt. 27-2), Mr. Anderson states he felt ostracized to some  
6 degree from individuals with whom he worked. He also alleges frustration and anxiety regarding  
7 the charge of Criminal Trespass, but as noted above, the Plaintiffs claim of malicious prosecution  
8 cannot proceed against the County Defendants so the difficulties associated with the criminal  
9 charge are not attributable to Sergeant White. Mrs. Anderson asserts that she had to watch her  
10 husband being treated shamefully, humiliated and arrested. She also asserts that Sergeant White  
11 referred to her husband as a “Fucking Nigger.”

12 As noted above, the Court is required to make an initial determination as to whether there  
13 are facts sufficient to allow the claim of Intentional Infliction of Emotional Distress to go to the  
14 jury. The undersigned finds that there are not.

15 Sergeant White is a police officer in Kitsap County, it was due to his position that he  
16 responded to situation at the Oxford Suites hotel. There are no facts asserted or alleged that  
17 suggest Sergeant White was aware of anything that would make the plaintiffs particularly  
18 susceptible to emotional distress. In fact, Sergeant White and the plaintiffs did not know each  
19 other prior to the incident of November 6, 2007.

20 Neither of the parties addressed the issue of privilege nor shall the undersigned.

21 However, a determining factor is the fact that the plaintiffs have failed to present any  
22 facts or assert any facts to support a conclusion that they suffered severe emotional distress. At  
23 the most, they allege difficulty sleeping and concentrating. That is far short of severe emotional  
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1 distress. They also present no facts to support the claim of the two young children that they  
2 suffered severe emotional distress.

3 Finally, there are no facts asserted or alleged to support the conclusion that Sergeant  
4 White was aware that there was a high probability that his conduct would cause severe emotional  
5 distress and that he proceeded in conscious disregard of that.

6 In order to survive a motion to dismiss, the plaintiffs must allege fact sufficient to support  
7 each element of the claim for intentional infliction of emotional distress. They have failed to do  
8 so.

9 The County Defendants motion to dismiss Claim IV: Intentional Infliction of Emotional  
10 Distress is GRANTED.

11 CONCLUSION

12 The Court GRANTS the County Defendants' motion to dismiss (Dkt. 24) and all claims  
13 against Kitsap County, Kitsap County Sheriff's Department and Sergeant Jim White are hereby  
14 dismissed.

15 Dated this 1<sup>st</sup> day of June, 2010.

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18 Karen L. Strombom  
19 United States Magistrate Judge  
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